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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,820	01/11/2002	Mike Moran	NA11P050B/02.005.01	2297
758	7590	01/16/2007	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			DOAN, DUYEN MY	
			ART UNIT	PAPER NUMBER
			2152	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/16/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/045,820	MORAN ET AL.
Examiner	Art Unit	
Duyen M. Doan	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 08 December 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 23 is/are allowed.

6)  Claim(s) 1-5,8-10,12-16 and 19-22 is/are rejected.

7)  Claim(s) 6,7,11,17,18 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 11 January 2002 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/08/06.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_.

## DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/08/06 has been entered. Claims 1-5,8-10,12-16,19-22 are amended for examination. Claim 23 was allowed. Claims 6-7,11,17-18 were objected.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5,8-10,12-16,19-22 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,633,835. Although the conflicting claims are not identical, they are not patentably distinct from each other because

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

Collecting data from a network segment; classifying the data into a plurality of flows; filtering and buffering the data base on the collected data and the flow; plurality of buffers allocated to the collected data; reallocating buffers if the number of flow changes; processing the filtered data based on the collected data and the flow corresponding to the filtered data.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4,12-15,21-22 rejected under 35 U.S.C. 103(a) as being unpatentable over Yazaki et al (us 2003/0002438) (Yazaki) in view of Dixon (us pat 6,993,604).

As regarding claim 1, Yazaki discloses a data collection module for collecting data from a network segment (see Yazaki pg.1, par 11-13; pg.2, par 16-17; par 40; pg.3, par 41,par 45, par.53; pg.4, par.64-65, input package); a flow processor coupled to the data collection module for classifying the, collected data into a plurality of flows (see Yazaki pg.1, par 11-13; pg.2, par 16-17; par 40; pg.3, par 41,par 45, par.53; pg.4, par.64-65, flow retrieval); a capture system coupled to the flow processor for filtering and buffering the collected data based on the collected data and the flow corresponding to the collected data (see Yazaki pg.1, par 11-13; pg.2, par 16-17; par 40; pg.3, par 41,par 45, par.53; pg.4, par.64-65, calculating and forward packets ); the capture system comprising a plurality of buffers allocated to the collected data (pg.2, par 40) and a main processor for processing the filtered data based on the collected data and the flow corresponding to the filtered data (see Yazaki pg.1, par 11-13; pg.2, par 16-17; par 40; pg.3, par 41,par 45, par.53; pg.4, par.64-65, the information table).

Yazaki does not disclose reallocating buffers if a number of priority flows changes.

Dixon teaches reallocating buffers if a number of priority flows changes (see Dixon col.2, lines 16-21, buffer is relocated if additional data stream added).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the teaching of Dixon to the system of Yazaki to

reallocate buffer because it would allow efficiently handling the changes of the number of data streams (see Dixon col.1, lines 48-67; col.2, lines 1-6).

As regarding claim 2, Yazaki-Dixon discloses wherein the data collection module prepends the data with descriptor information, wherein the descriptor information is used by the capture system to filter the collected data (see Yazaki pg.1, par 11-13; pg.2, par 16-17; par 40; pg.3, par 41,par 45, par.53; pg.4, par.64-65).

As regarding claim 3, Yazaki-Dixon discloses wherein the capture system includes a capture buffer and a focus buffer, wherein the capture system filters the collected data stored in the capture buffer, wherein the filtered data is sent to the focus buffer (see Yazaki pg.1, par 11-13; pg.2, par 16-17; par 40; pg.3, par 41,par 45, par.53; pg.4, par.64-65, also see Fig.1, buffer 13a, 13b).

As regarding claim 4, Yazaki-Dixon discloses wherein the capture system captures the collected data in the capture buffer in at least one of a fill and stop mode, a wrap mode, a priority queuing mode, and a non-priority queuing mode (see Yazaki pg.1, par 11-13; pg.2, par 16-17; par 40; pg.3, par 41,par 45, par.53).

As regarding claims 12-15, the limitations are similar to limitations of claims 1-4, therefore rejected for the same rationale as claims 1-4.

As regarding claim 21, the limitations are similar to limitations of claim 1, therefore rejected for the same rationale as claim 1.

As regarding claim 22, the limitations are similar to limitations of claim 1, therefore rejected for the same rationale as claim 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,8-9,16,19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yazaki in view of Dixon as applied to claims 1,12 above and further in view of Kohzuki et al (us pat 6,912,225) (hereinafter Kohzuki).

As regarding claim 5, Yazaki-Dixon discloses the invention substantially as claimed in claim 1, but fail to teach wherein in priority queuing mode the capture buffer is segmented into priority and- non-priority queues, wherein the buffer space for each queue varies dynamically based on the arrival of data that meets priority criteria.

Kohzuki teaches wherein in priority queuing mode the capture buffer is segmented into priority and- non-priority queues, wherein the buffer space for each queue varies dynamically based on the arrival of data that meets priority criteria (see Kohzuki pg.4, lines 3-11; pg.6, lines 26-65).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the teaching of Kohzuki to Yazaki-Dixon to have priority queue and non-priority queue, and the buffer space between these queue is varies, because by having the priority queue and non-priority queue, and the buffer space between these queue is varies would provide the guarantee bandwidth to the user (see Kohzuki, col.3, lines 41-65).

As regarding claim 8, Yazaki-Dixon-Kohzuki discloses the capture system selectively discards flows from the priority queue based on predetermined criteria (see col.1, lines 50-60). The same motivation was utilized in claim 5 applied equally well to claim 8.

As regarding claim 9, Yazaki-Dixon discloses the invention substantially as claimed in claim 1, but fail to teach wherein the main processor identifies a flow as being important, wherein the flow processor uses the identification as criteria for forwarding additional data from the identified flow to the main processor.

Kohzuki teaches wherein the main processor identifies a flow as being important, wherein the flow processor uses the identification as criteria for forwarding additional data from the identified flow to the main processor (see Kohzuki pg.4, lines 3-11; pg.6, lines 26-65). The same motivation was utilized in claim 5 applied equally well to claim 9.

As regarding claim 16, the limitations are similar to limitation of claim 5, therefore rejected for the same rationale as claim 5.

As regarding claims 19-20, the limitations are similar to limitation of claim 8-9, therefore rejected for the same rationale as claim 8-9.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yazaki in view of Dixon as applied to claim 1 above, and further in view of Deroux-Dauphin et al (us pat 6,023,454) (hereinafter Deroux).

Yazaki discloses the invention substantially as claimed in claim 1, but fail to teach wherein at least a portion of the probe apparatus is implemented on a Field Programmable Gate Array (FPGA).

Deroux teaches wherein at least a portion of the probe apparatus is implemented on a Field Programmable Gate Array (FPGA) (see col.7, lines 11-15).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the teaching of Deroux to Yazaki to implemented on a Field Programmable Gate Array (FPGA), because by implemented on a Field Programmable Gate Array (FPGA) would economically constitute nodes operating at high speed (see Deroux, col.7, lines 11-15).

***Allowable Subject Matter***

Claims 6-7,11,17-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 23 is allowed.

***Response to Arguments***

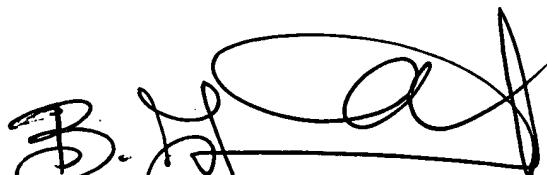
Applicant's arguments with respect to claims 1-5,8-10,12-16,19-22 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duyen M. Doan whose telephone number is (571) 272-4226. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner  
Duyen Doan  
Art unit 2152



BUNJOB JAROENCHONWANIT  
SUPERVISORY PATENT EXAMINER